IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 564 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HEIRS OF DECEASED BHIKHUBHAI J.MODI: Petitioner.

Versus

BAHADURBHAI MAVJIBHAI: Opponent.

Appearance:

Ms. Mamta R.Vyas, for Mr. D.D. Vyas, Advocate for petitioners.

MR JITENDRA M PATEL for Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/11/97

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dated 31st August 1981, passed by the then learned District Judge, Valsad at Navsari, in Regular Civil Appeal No. 72 of 1980 on his file, reversing the judgment and decree dated 14th February 1975 passed by the then learned Civil Judge (J.D.), Gandhevi in Regular Civil Suit No. 47 of 1975 on his file, whereby respondent was ordered to vacate the house and pay the sums of rent, the

original-plaintiff has preferred this revision application.

2. In order to appreciate the rival contentions, the facts which led the present petitioners to prefer this application may, in brief, be stated. Bhikhubhai Jethabhai Modi, through whom the petitioners claim being heirs and legal representatives, was the owner of a hut bearing Municipal House No. 3896 situated on Mahatma Gandhi road leading to Gaekwad Mill in Billimora town. The same was let to the present opponent at the monthly rent of Rs. 10/-. The period of monthly tenancy commenced on the first day of a month. As per the terms and conditions of the tenancy the opponent was bound to make the payment everymonth regularly. Over and above the rent of Rs. 10/-, the opponent had also to pay the municipal taxes and other cess. As per the terms and conditions of the tenency, the hut-type house, (hereinafter referred to as `the suit premises'), was to be used for residential purpose. After taking the suit premises on lease as per the terms and conditions of the tenancy the opponent was not making the payment of rent. Right from 1st October 1970 the opponent failed to make the payment of rent although the same was often demanded. Whenever the demand for rent was made, the opponent gave evasive reply and avoided to pay. With no option therefore the petitioner's predecessor-in-title Bhikhubhai Jethabhai Modi thought it fit to issue the notice terminating the tenancy. On 16th December 1974 the notice was issued which was served on the opponent on the next day. After the notice was received the opponent paid no heed. He neither paid the rent nor vacated the suit premises. He replied the notice after the notice period was over. With no option therefore Bhikhubhai Jethabhai Modi filed Regular Civil Suit No. 47 of 1975 before the court of the Civil Judge (JD) at Gandhevi for the recovery of Rs. 520/-, the amount of rent, and possession of the suit premises together with mesne profits and costs of the suit.

3. The opponent after being served with the summons appeared before the trial court and filed his written statement (Exh. 10) denying every allegation levelled against him. According to him he had not hired the suit premises from Bhikhubhai Jethabhai. No doubt he is occupying the suit premises, but he is not the tenant of Bhikhubhai Jethabhai, who is not the owner of the suit premises and has no right to file the suit. He had become the owner of the suit premises by way of adverse possession. He never paid the rent to Bhikhubhai Jethabhai.

4. Thus, in short denying the ownership of Bhikhubhai Jethabhai and his locus standi to file the suit, the opponent advancing the plea of adverse possession urged the lower court to dismiss the suit with costs. The lower court then framed necessary issues at Exh. 11 on 8th August 1977 and then recorded the evidence adduced by the parties. Appreciating the evidence, the then learned Civil Judge found that Bhikhubhai Jethabhai had succeeded in establishing the case he had alleged against the opponent. He therefore decreed the suit in toto and ordered the opponent to hand over peaceful and vacant possession of the suit premises to Bhikhubhai Jethabhai and further ordered to pay Rs. 360/-, the amount of rent that had become due & not paid. He ordered to hold inquiry as to the mesne profit.

5. Being aggrieved by such judgment and decree the opponent preferred Regular Civil Appeal No. 72 of 1980 before the District Court for the District of Valsad at Navsari. The then learned District Judge, hearing the parties found that the relationship of landlord and tenant was not established because the predecessor-in-title of the present petitioners, Bhikhubhai Jethabhai had failed to establish his ownership; and that he let the suit premises occupied by the opponent. He, no doubt, found that the opponent was residing in the suit premises which once in past belonged to Tata. He also held that the opponent was for the last more than 40 years was residing in the suit premises. He had therefore become the owner by way of adverse possession. In view of his such findings, the learned District Judge allowed the appeal and set aside the judgment and decree passed by the trial court. Being aggrieved by such judgment and decree the present revision application has been preferred by the heirs and legal representatives of Bhikhubhai Jethabhai Modi, the plaintiff in the suit.

6. Assailing the judgment and decree of the District Court, Bulsar at Navsari, it is submitted that the learned District Judge reached the conclusions contrary to the provisions of law and evidence on record. The appreciation of the evidence made is arbitrary, perverse and wholly in disregard of the sound principles of law. The evidence on record is sufficient to hold that the opponent is the tenant of the petitioners. There is no evidence on record to hold that opponent has become the owner by way of adverse possession. The opponent had not made the payment of rent and even during the pendency of the suit he made no payment. When accordingly no payment

is made till this revision application is being heard by this court, the opponent may be held the tenant not ready and willing to pay the rent and on that count the decree as prayed for is required to be passed. The learned advocate representing the petitioners has thus supported the judgment and decree passed by the trial court, and pointing out the errors committed by the learned District Judge, she urged to allow this Revision Application and restore the decree of the trial court.

7. The learned advocate representing the opponent has assailing the judgment of the trial court, and supporting the judgment of the District Court, urged to reject this application.

8. The first question required to be examined is about the relationship of landlord and tenant asserted by the petitioner and denied by the opponent. In this case,no rent note is executed, and there is no other documentary evidence throwing light on the proposition. Of course certain extract from the property register from the Billimora Municipality are produced at Ex. 31 & 32 wherein Bhikhubhai Jethabhai Modi is shown to be the owner of the suit premises, while the opponent is shown to be the occupant of the suit premises and such entries in the record of the Municipality cannot be the sole decisive factor and cannot be the base for drawing one or the another conclusion but it can have a little corroborative value in the absence of any other legal evidence to prove ownership, and peculiar facts and circumstances of the case being on record. Bhikhubhai Jethabhai Modi died during the pendency of the suit and therefore Bachubhai, the brother of Bhikhubhai Jethabhai having the knowledge about the tenancy figured before the trial court at Exh.22. He has supported Bhikhubhai's ownership of the suit premises. According to him deceased Bhikhubhai Jethabhai was the owner of the suit premises and in his presence he let the same to the opponent, and in support thereof he has produced extract Ex. 31 & 32 getting the same from the municipal office. It is pertinent to note that in the cross-examination the case advanced in defence is not put forth asking necessary questions. The entries in Municipal record are not assailed. What is suggested in the cross-examination is that Bhikhubhai Jethabhai did not let the suit premises to the opponent. When a particular case is asserted denying the case of the other side, it is required to be put up while cross-examining the other side and his witnesses, failing which the case asserted loses the value, and the same cannot be accepted unless other cogent material is available on record. Reading

the cross-examination of Bachubhai and the evidence of the opponent, what can be deduced is that the opponent denying the relations of the landlord and tenant has come forward with two fold cases running counter to the other one. At one point of time he suggests that he did not hire the premises from Bhikhubhai Jethabhai. He denies the ownership of Bhikhubhai, but he does not state who is the real owner. At another stage he comes forward with the case that at the time of Tata before about 40 years he constructed the hut type house namely superstructure on the land and has become the owner by adverse possession. He did not take permission of any one, and made it clear that the possession of the land was that of Bhikhubhai. It may be noted that the opponent was once the elected member of the Municipality. It cannot be said that he was not aware about the procedural formality about mutation and the significance of mutation for whatever worth the same may be. He did not get his name mutated in Municipal record. It may be stated that the opponent has not specifically alleged his case in defence. He merely denied the relationship of landlord & tenant and has contended that he had become the owner owing to long possession of 40 years which was against the person who was the owner, but does not name that person. In view of such facts on record Municipal extract not assailed has little corroborative value.

9. Of course the opponent has come forward with the case that he constructed the superstructure, but he has failed to substantiate his say adducing necessary evidence. He has rest contented with his bare statement. He has not examined the person who constructed the superstructure. He has also not brought on record documentary evidence namely bills or vouchers issued by the trader from whom he purchased the building materials. He has also not examined the neighbour who is in know about the construction. According to him one Tata knew about the same. Neither that Tata or his heir having the knowledge is also examined. When material evidence available is suppressed by the party the court is entitled to infer every thing against that party. It may be stated that the case of erection of superstructure by him is not pleaded in written statement. At the time of hearing improvement is made. The learned Judge of the trial court was therefore perfectly right in reaching the conclusion that the case of the ownership of the superstructure advanced by the opponent was far from truth and his say in that regard was not credible. On the other hand, the petitioners examined Bachubhai and have produced the extract from the municipal record. It may again be stated at this stage that the entries in the

municipal records are not the proof of title, and they neither negative the same or establish the title and therefore those entries cannot be made the sole base for determining the title; but when the opponent has led no evidence though available and has never taken care to get his name mutated knowing well about the entry in favour of Bhikhubhai Jethalal having been posted injurious to his interest, his such omission & above stated facts on record are sufficient to accept the say of the petitioner on oath.

10. Over and above such circumstances, what is pertinent to note is that a notice terminating the tenancy was served upon him wherein the ownership has been asserted by Bhikhubhai Jethabhai advancing the case that he being the owner had let the suit premises to the opponent. The opponent has stated in his evidence that he has not replied the notice. When he has remained silent after the receipt of the notice, it is a strongest circumstance on record going to discredit the truth of the defence he has advanced. Under the circumstances and for the reasons cogent in nature given by the learned trial judge to which I agree, the irresistible conclusion that can be drawn in this case is that the opponent is the tent of the suit premises owned by the petitioner. In one's own evidence the opponent has stated that the possession of the land was that of Bhikhubhai. When the relevant context & other facts as well other statements made in his deposition are borne in mind, what can be deduced or construed is that the opponent misused the word "possession" but he thereby wanted to convey & meant ownership of Bhikhubhai. Before the court therefore he accepted Bhikhubhai's ownership which he denies in written statement.

11. The learned trial Judge has discussed the evidence on this line assigning logical reasons to which I agree. When that is so, it is not necessary for me to restate those reasons again. Whatever the learned District Judge in appeal has observed & concluded being not in consonance with the evidence on record, and mainly based on inferences and conjectures cannot be maintained or approved. In view of the fact, it is clear that the suit premises inclusive of the superstructure belong to the petitioner. Consequently the opponent in possession can be said to be the tenant of Bhikhubhai & petitioners. The learned trial Judge was therefore right in holding that relations of landlord & tenant between the parties were established.

12. The opponent has come forward with the case of

adverse possession. According to him he is occupying the suit premises for the last over 40 years and his possession has ripened into the adverse possession. His case has been accepted by the District Court, while the trial court has negatived the same. Before I proceed to dissect the merits of the rival cases it may be stated mentioning certain decisions what the law on adverse possession is ?

13. In cases of Amrit Sansy Ram and another Vs. Diwanchand, A.I.R. 1924 Lahore 625; Ram Shankar and another vs. Sheo Dutt and another A.I.R. 1933 Oudh 462, Maharaja Srichandra Nandi and others Vs. Biajnath Jugal Kishore, A.I.R. 1935 Privy Council 36; Jas Ali Quidwal & others Vs. Special Manager, Court of Warda, Balrampur State and others, A.I.R. 1935 P.C. 53; Maharaj Sir Kesho Prasad Singh Bahadur Vs. Bahuria Mt. Bhagjoghe Kuer and others, A.I.R. 1937 P.C. 69; Makina Atchayya Patrudu Vs. Jalaluddin Sahib and others, A.I.R. 1938 Mad.454; B. Budhar Raj Vs. Banarashi Raj & others, A.I.R. 1948 Allahabad 31 Pandurang Bhimrao Kulkarni and others Vs. Malkappa Bhimgouda & others, A.I.R. 1950 Bombay 302; P. Lakshu Reddy Vs. L. Lakshshi Redy, A.I.R. 1957 S.C. 314; Nangaaitham Gourmani Singh Vs. Mayangban Ibungahal Singh, A.I.R. 1957 Manipur 16 Ramlochan Singh & others Vs. Pradipsingh & others, A.I.R. 1959 Patna 230, Bani Madhavprasad & others Vs. Rasiklal Ambalal & others, A.I.R. 1960 Madhya Pradesh 23; Ramdas Jha and others Vs. Narendra Narayan Mishra and others A.I.R. 1964 Patna 510; Mt. Bhago Vs. Deep Chand Narphul & others, A.I.R. 1964 Punjab 183 Lachhimi Nath Pathak and another Vs. Bholenath Pathak and others, A.I.R. 1964 All. 383 Ram Kishor & others Vs. Union of India and others, A.I.R. 1965 Calcutta 282; Rev. Father, K.C. Alexander of Kuttikandathilaya Kollakulhivil Thadivaser Muri Vs. Nair Service Society Limited, A.I.R. 1966 Kerala 286; Shri Ram Das Amir Chand Vs. Shri Mangat Rai Chhittme A.I.R. 1967 Delhi Budha Dibya Vs. Swapeswar Deb and another, A.I.R. 1972 Orissa 145, Aas Mohmed Fowtha and another Vs. Smt. Jaina Bibi, A.I.R. 1973 Madras 290; P. Periasami & others Vs. Periathambi and others, A.I.R. 1980 Madras 33 and Gaya Prasha Dikshit Vs. Dr. Nirmal Chander and another, 1984 G.L.H. (S.C.) 474, in short; but precisely what is laid down with regards to the adverse possession, is that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession means, hostile, notorious, and exclusive possession coupled with animus, which is expressly or impliedly in denial of the title of the true owner, i.e. possession must be irreconcilable with the rights of the true owner; and

further, to construe adverse possession, it must be proved peaceful, open, adequate, in continuity, in publicity, i.e. notifying to the mankind that defendant on the land is claiming it as his own and in extent. Hence, positive claim must be set up through out the requisite period by the person claiming the property by adverse possession. The Supreme Court also held in a case of MVS Manikayala Rao Vs. M. Karasimhaswami, A.I.R. 1966 S.C. 470; that the question of adverse possession is one of facts, and has to be judged as per the facts on record. In view of such law regarding adverse possession, I have now to find out whether appellant's possession ever became adverse, and if so, from what day ?

14. In view of such law made clear, no evidence has been led to establish adverse possession. However long the possession may be, it simply cannot establish adverse possession. Animus thereof asserting the title hostile to the true owner is also necessary which is in this case wanting. It may be remembered that the notice is not replied and the case of ownership not refuted. What is further pertaining to note is that in his evidence (Ex. 35) the opponent has categorically admitted that the possession of the land is that of the petitioner, but he was in possession of the superstructure. It should be mentioned at this stage that no doubt the word "Kabjo" is used but as made clear hereinabove the opponent being illiterate described "ownership" using the word "Kabjo" (possession). When accordingly the word "Kabjo" is used it would certainly show that by making the aforesaid statement he accepted the ownership of the petitioner. When once in the deposition he has accepted the ownership of the petitioners, hostile assertion as required by above stated law is wanting in this case. Further, it may be mentioned that no doubt it is open to the party to take alternative plea though it may be running counter to the other one but when the party takes alternative plea running counter to the other one the impact thereof cannot be overlooked. At one stage the petitioner asserts his ownership submitting that he constructed the superstructure, and at another stage raising the contrary plea he comes forward with the case of adverse possession. When two pleas are contrary to each other, the required animus can never exist. In short, there is no evidence showing that possession of the opponent is hostile to the petitioner's ownership coupled with animus which is expressly or impliedly in denial of the title. Long possession cannot help the opponent. The learned trial Court Judge was therefore perfectly right in holding that the case of adverse was not established, and

for the aforesaid reason the learned District Judge fell into error in reversing the finding qua the adverse possession of the trial court.

15. Having found that opponent has failed to establish the case of adverse possession and the petitioners have succeeded in establishing not only their ownership over the suit premises, but the premises having been let to the opponent the relationship of landlord and tenant is also established, the next question that arises for consideration is whether the petitioners are entitled to the decree of eviction on the ground of non-payment of rent. Admittedly, right from 1st October 1970 no rent has been paid. When on 16th December 1974, although the notice was given, no rent was paid thereafter. It is submitted before me that up-till-now no rent has been paid. What can be the impact of such non-payment has to be examined. But before the same is done, which of the provisions of the Bombay Rent Act is applicable has to be ascertained. So far as the ground of non-payment of rent for seeking the eviction decree is concerned, one has to look to Section 12.

16. If the tenancy is monthly, the rent is payable by month, on the date of the notice demanding the rent, the tenant is in arrears of rent for six months, or more, and there is no bonafide dispute about the standard rent and permitted increases, or the same is not bonafide raised within one month after the receipt of notice, Sec. 12(3)(a) of the Bombay Rent Act will apply; and in other cases, Sec. 12(3)(b) will apply. If Sec. 12(3)(a) is applicable, the tenant, in order to establish his ready and willingness to pay the rent, has to tender all the then dues within one month after the receipt of notice; and if he neglects to tender accordingly, he will be deemed to be the tenant, not ready and willing to pay the rent. In that case, he will lose the protection, and court will have no option, but to pass the decree of eviction against him. When Sec. 12(3)(b) applies, the tenant, in order to show his ready and willingness to pay the rent, has to tender, as per the standard rent, all the amounts of rent then due on the first day of hearing, and should then go on paying/depositing in court, the rent every month regularly as and when it falls due, till the final decision in the suit, and if appeal is preferred, till the final disposal of the appeal, provided of course, there is no bonafide dispute about the standard rent, and permitted increases; or if there is such dispute, it is set or rest finally before the date of first hearing i.e. date of issue in Regular Suit, not triable in summary way i.e. small cause way,

and if there is a bonafide dispute about standard rent, and is not set at rest finally before the first day of hearing, and the court determines the same later on, the duty of the court is to fix the date after determining the standard rent for depositing or tendering the rent that has become due till then as per the standard rent fixed, and the tenant has to deposit in Court, at the rate of standard rent fixed, all the then dues on or before the date fixed by the court, and should then go on paying or depositing in court, the rent every month regularly till the suit is finally disposed of. If in appeal, the appellate court revises the standard rent and enhances the rate of rent, the tenant has to pay all the then differences on or before such date fixed by the appellate court, and should then go on depositing the rent every month regularly till the appeal is finally disposed of. The tenant is duty bound to pay the amount of costs only, if specifically ordered by the Court. If the tenant, without any good cause committed a single default in making payment accordingly, the requirements of Sec. 12(3)(b) could not be said to have been fulfilled, and in that case, the court had no option, but to pass the decree of eviction, holding the tenant to be the tenant not ready and willing to pay the rent. If the trial court prefers to determine standard rent, not before the first date of hearing, but subsequently at any stage or alongwith other issues; and after determining the standard rent, it does not grant reasonable opportunity (if found necessary) to the tenant to pay the rent that has become due, fixing the date for payments, and disposes of the suit, delivering judgment, giving findings on all issues, it will be the material irregularity and illegality; and in that case, it becomes the duty of the appellate court to fix the date, and thereby, grant reasonable opportunity to the tenant to deposit all the dues and then go on depositing regularly every month till the appeal is finally disposed of. In such case also, if a single default was committed by tenant for no good cause, he could be held to be the tenant, not ready and willing to pay rent, and to have lost the protection of law. For some time in past, there was controversy about the meaning of the word "regularly" but it was then set at rest by the Supreme Court in the case of Mrunalini B. Shah and another Vs. Bapalal M. Shah (1978) XIX GLR 1090. It is held that "regularly" means reasonable punctuality, but not clock-wise. It must conform with substantial proximity to the sequence of time or intervals at which the rent falls due. If the rent payable by month, the tenant must tender every month, or as it falls due, or at his discretion in advance. In short, tenant should pay the rent before the

next month's rent becomes due. But this was the position prior to the amendment made in Sec. 12(3)(b). Vide Gujarat Amendment Ordinance, 1984, the Govt. of Gujarat amended Sec. 12(3)(b) of the Bombay Rent Act where by the words "and therefore", "regular", and "also" are deleted. Now, Sec. 12(3)(b) runs as follows :-

> "...(b) In any other case, no decree for eviction shall be passed in any such suit, if on the first day of hearing of the suit, or on or before such other date, as the court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due; and thereafter continues to pay or tenders in court permitted increases till the suit is finally decided and pays costs of the suit, as directed by the court...."

In view of such amended Sec. 12(3)(b), and the decision in Mrunalini Shah's case (Supra), the tenant, in order to establish his ready and willingness to pay the rent, has to pay up all the then dues on date of issues, provided, of course, there is no dispute about the standard rent, or that dispute has been set at rest, prior to framing of the issues, and should then go on paying the rent till the suit is finally decided. When the word `regularly' is deleted, and the words `continues to pay' are substituted in the Section, in my view, the word `continue' connotes to go on paying the rent, unbrokenly i.e. without interruption. However, if there are few, negligible, not alarming, defaults in making the payment, the same may not come in the way of the tenant. But the defaults in sequence or in piecemeal indicating neglect to pay or avoidance to pay without just cause, or mischievous omission to pay or failure to pay rousing the landlord to go to war or causing the landlord to pull a long face or the defaults exhausting landlord's endurance will, regardless of the numbers of defaults, show that the tenant is not ready and willing to pay rent even under Sec. 12 (3)(b) and in that case the court will have no option but to pass the decree of eviction. Of course the court will be under the obligation to give time to the tenant to make the payment, provided the dispute about standard rent is raised and the same is not set at rest either before the issues are framed or subsequent to it and later on while disposing of the suit the same is determined.

17. Of course no dispute about the standard rent is raised by the petitioners. However, Section 12 (3)(a) of the Bombay Rent Act will not apply, but Section 12 (3)(b)

will apply. If taxes over and above the rent fixed are levied from the tenant, and the recovery of the taxes is not made payable every month dividing into 12, but is made payable as and when the local body imposing the taxes levy, or otherwise than every month Section 12(3)(b) would apply because taxes are also the part of the rent. When the rent is made payable in two parts one at the end of every month and another otherwise than at the end of the month Section 12(3)(b) will apply. In this case, it is admitted fact that over and above the rent of Rs.10/- p.m. the opponent has to pay municipal taxes and cess levied by Billimora Nagarpalika. It is also made clear before me that taxes are not levied every month dividing the same into 12, but the same are made payable as & when the Municipality levies the same. The Municipality levies the taxes every year. In this case therefore the rent is made payable in two parts;one of Rs. 10/- every month, while the another of tax at the end of every year. When that is the case, not Section 12(3)(a) but Section 12(3)(b) of the Bombay Rent Act will apply.

18. True Section 12(3)(b) which came to be amended after the Supreme Court in the case of Ganpat Ladha vs. Sashikant Vishnu Shinde 19 G.L.R.502 made the law clear interpreting the word "regularly", is applicable, but the tenant under amended provision does not acquire the right to pay the rent at his whim or caprice or sweet will, he is under obligation to pay the rent continuously as stated hereinabove if he desires to have protection of law. Here in the case on hand no dispute regarding standard rent is raised, and therefore it was not at all necessary for the court to fix the standard rent and then call upon the tenant to make the payment granting time. As in this case, dispute about standard rent is not raised, it was incumbent upon the opponent to make the payment of the rent that became due on the day when the issues were framed and thereafter go on depositing the rent every month continuously although not regularly, but that is not done for years together for no good cause, with the result numebrs of defaults occured. The defaults being not one or two or negligible, but continued for years together, inciting the petitioners to push a war button or exhausting their endurance or causing them to pull a long face can be termed alarming establishing opponent's neglect to pay the rent, in other words definitely showing that he is a tenant not ready & willing to pay rent. Consequently the requirements of Sec. 12 (3)(b) are not satisfied and hence the opponent loses the protection. Consequently, on the ground of non-payment of rent is bound to vacate the suit premises,

and the petitioners are entitled to have the decree of eviction under Section 12(3)(b) of the Bombay Rent Act. The learned trial court Judge on this count was also perfectly right. The appellate court has not dealt with this point and therefore it is not necessary to deal with the reasonings of the appellate court.

19. For the aforesaid reasons, it is clear that the learned District Judge fell into above stated errors of law and misdirected himself in appreciating the evidence and drawing the conclusions. His conclusions & findings being inconsistent with the applicable law are required to be upset, and the findings and judgment and decree passed by the trial court are required to be restored. In the result, this revision application is allowed. The judgment and decree passed by the District Court, Valsad at Navsari in Regular Civil Appeal No. 72/80 on 31st August 1981 are hereby set aside and the judgment and decree passed by the trial court on 14th February 1975 in Regular Civil Suit No. 47/75 are restored with costs throughout. Rule accordingly made absolute.

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*RMR